

Management of Engine Valves Ltd. Vs. Presiding Officer, First Additional Labour Court and anr.

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Court : Chennai

Decided On : Feb-22-2002

Reported in : (2002)IIILLJ57Mad

Judge : A.K. Rajan, J.

Acts : Payment of Bonus Act - Sections 17B; Industrial Disputes Act - Sections 11A; [Constitution of India](#) - Article 226

Appeal No. : W.P. No. 14502/1994

Appellant : Management of Engine Valves Ltd.

Respondent : Presiding Officer, First Additional Labour Court and anr.

Advocate for Def. : K. Chandru, Standing Counsel and ;K.S. Mahadevan, Adv. for Respondents Nos. 1 and 2

Advocate for Pet/Ap. : Dwarakanathan, Adv.

Disposition : Petition disposed of

Judgement :

ORDER

A.K. Rajan, J.

1. This writ petition is filed by the management against the award of the Labour Court.

2. The petitioner is the employer and between the workers and the management, the disputes were settled by mutual agreement during the period 1966 to 1978. During the period when Payment of Bonus Act came into force, this company gave maximum bonus of 20 per cent. Due to the directions of the Tamil Nadu Electricity Board, dated April 19, 1979, with regard to power cut in the State, the management wanted to change the weekly holidays from Saturdays and Sundays to Fridays and Saturdays. But the workmen went on strike stating that for the revised weekly days, they should be paid extra salary; it resulted in the lockout on May 2, 1979. Consequently 22 workmen who indulged in the illegal strike were given chargememo and enquiry was conducted and ultimately they were dismissed. On February 25, 1980, lockout was lifted. Thereafter, the elected representatives of the union were kept out of picture and a five man committee was formed and a settlement was arrived at between the five-man committee and the management. By that, ten workers were taken back in service and twelve persons were paid compensation and thus, the matter was settled. The five-man committee enlarged to eight members. In the meanwhile, the union filed a civil suit and obtained injunction not to negotiate with the eight-man Committee which was claiming to represent the union. But later on April 17, 1981, a settlement was arrived at between the management and the eight-man committee. In the year 1985, another settlement was also arrived at between the management and the committee formed by the workmen. The next election was to be held for the committee on December 27, 1986. A few workers wanted to prevent the election and the second respondent was one among them. On December 28, 1986, second respondent and another were in charge of maintenance work. They committed some mischief in the electricity service connection, and thereby they opened the Maximum Demand Meter (MDM) and snapped the connection wire; this was found on December 30, 1986. Since the second petitioner and another person Sampath Kumar were in charge of maintenance work, both of them were given chargememo. The fact that the electric wire was cut-off from the Maximum

Demand Meter was immediately intimated to the Electricity Board. Earlier on February 1, 1986, a similar incident had taken place which resulted in the management paying penalty more than a lakh of rupees. 'When the chargememo was sought to be served on the second respondent on January 6, 1987, second respondent refused to receive it and used abusive language against the persons who attempted to serve the chargememo on him and also on the management. On the basis of the chargememo, enquiry was held by a District Judge. The enquiry officer found the second respondent guilty of two charges out of the three charges framed. After following the procedure, the management terminated his services.

3. The abovesaid termination was challenged by the second respondent before the Labour Court and the Labour Court set aside the order of termination and ordered reinstatement. Against that, this writ petition is filed.

4. Learned counsel for the petitioner submitted that the enquiry officer had categorically found that the mischief of cutting off the wire leading to Maximum Demand Meter should have taken place between 7.45 A.M. and 12.30 P.M. on December 28, 1986. At that point of time, the second respondent and one Sampath Kumar were the only persons on duty. Second respondent is an electrician who is an expert in that field. Therefore, the enquiry officer has found that second respondent was responsible for this act and has given almost 19 circumstantial evidence as reasons to arrive at this conclusion. Admittedly, there is no eye-witness for this occurrence. The Labour Court, in spite of the fact that the enquiry officer had given 19 valid reasons to arrive at this conclusion simply set aside them on the ground that the conclusion is based only on surmises and suspicion and therefore, the Labour Court award is perverse and is liable to be set aside. In support of his contention, he relied upon a decision in Banaras Electric Light and Power Company Ltd. v. Second Labour Court, , where the Supreme Court held that the Labour Court cannot re-assess the evidence, even though it is possible for other authority to arrive at a different conclusion on the same evidence and therefore the award is liable to be dismissed on this ground alone.

Further, the counsel for the petitioner contended that two charges were found to be proved by the Labour Court, but the other charge, i.e., abusing the officers

concerned with vulgar language by the second respondent was not dealt with by the Labour Court.

5. Sri K. Chandru, learned senior counsel for the second respondent argued that the above decision was before the introduction of Section 11-A of the Industrial Disputes Act. Subsequent to the introduction of Section 11-A of the Act, the Labour Court has got power to reassess the entire evidence as held in *Workmen of Firestone Tyre and Rubber Company of India(Private), Ltd. v. Management*, . Therefore, the decision relied upon by the counsel for the petitioner does not help his case, since Section 11-A has been introduced by which the Labour Court has got power to reassess the evidence and come to a different conclusion. Therefore, on that ground the award cannot be set aside.

6. Learned senior counsel for the second respondent also pointed out that admittedly even prior to the crucial date, i.e., on December 28, 1987, the company committed theft of electricity and the management was guilty of such malpractices whereby the Maximum Demand Meter had been tampered with. Therefore, it cannot be said that only the second respondent had indulged in this malpractice. He also pointed out that the management wrote a letter immediately after finding out this mischief that snapping of wire may be accidental and not that somebody would have committed the mischief. Therefore, the management was not sure that the mischief was done only by the second respondent and others. Even the management knew that it was accidental, but in order to rope in the second respondent who was found creating problems and to remove him once for all made use of this against the second respondent. Therefore, the charge was framed against him and hence, the counsel for the second respondent submitted that the award of the Labour Court is correct as the Labour Court has the right to reassess the evidence and come to a different conclusion as of the enquiry officer. Enquiry officer has given reasons that the second respondent was the person who had committed the offence. He has given 19 circumstantial evidence to arrive at this conclusion. The Labour Court going into this evidence has also given number of reasons why the findings of the enquiry officer cannot be accepted and ultimately found that the enquiry officer has come to the conclusion only on the basis of the doubt and circumstantial evidence which do not conclusively prove the

guilt against the second respondent. A perusal of the award of the Labour Court would show that the conclusion arrived at by the Labour Court cannot be said to be perverse, in view of the fact that it has given number of reasons as to why the circumstantial evidence cannot be accepted. As per the decision rendered in 1973 (1) L.L.N. 273 (supra), the Labour Court can reassess the entire evidence. Therefore, the Labour Court cannot be said to have exceeded the limit when it has come to the conclusion different from the conclusion arrived at by the enquiry officer.

7. Therefore, the award of the Labour Court in setting aside the finding of the enquiry Officer with reference to the charge that second respondent had indulged in cutting off the wire leading to the Maximum Demand Meter is not proved is acceptable.

8. Learned counsel for the petitioner submitted that the Labour Court has not considered the Charge No. 3 at all. That charge had not been dealt with, but that charge is very serious, since the respondent No. 2 used abusive language which cannot be treated lightly by the management. Therefore, proof of that charge alone is sufficient to terminate the second respondent is justifiable. The counsel for the respondents submitted that even though the Labour Court failed to assess and come to a conclusion with respect to this, this Court exercising jurisdiction under Article 226 of the Constitution has the right to deal with that and also come to a conclusion of its own. In support of that, the learned senior counsel referred to a decision in National Carbon Company v. Labour Court and Anr., 1987 (1) L.L.N. 405, decision of this Court in Management of Madras Fertilizers Ltd., Manali, Madras v. Presiding Officer, First Additional Labour Court, Madras, and Ors., (Mad) where this Court has held that instead of remanding the matter to the Labour Court for not giving the finding with respect to certain charge, this Court can decide the issue in question. In view of this judgment, this Court has to decide this issue.

9. Considering the circumstances in which abusive language was used by the second respondent and taking into account the strata to which he belongs and the circumstances under which the abusive language was used, this Court is of the

view that the same can be treated lightly as it has been treated by the enquiry officer. Taking into totality all the circumstances, this Court is of the view that lesser punishment may be imposed.

10. Consequently, this Court is of the view that if there are some deductions in the back wages, payable to the second respondent, it will meet the ends of justice. The second respondent was suspended in January 1987. During the period he was under suspension for 21 months, he was drawing 50 per cent of the pay as subsistence allowance. He was dismissed from service in October 1988. As per the order in the Section 17-B petition in W. M. P No. 26929 of 1994, he was paid last drawn wages from August 18, 1994, viz., from the date of writ petition and the arrears also was directed to be paid to him.

11. In the circumstances of the case, the petitioner would be entitled to reinstatement with continuity of service. Order of reinstatement shall be issued within four weeks. Second respondent would be entitled to be paid wages as he would get in accordance with the continuity of service. But with respect to back wages, the petitioner (sic) would not be entitled to get any other amount as back wages more than what he has been paid as per Section 17-B. Insofar as the amount deposited by the petitioner and now lying in the Court deposit, 50 per cent of amount inclusive of interest accrued, if any, will be payable to the worker and the other 50 per cent shall be refunded to the management.

12. With the above observations, the writ petition is disposed of.